Office - Supreme Court, U.S.
FILED
JUL 19
ALEXANDER L. STEVAS
CLERK

No. 81-2178

IN THE SUPREME COURT OF THE

UNITED STATES

1982 Term

People of the State of
Michigan on relation of
William L. Fisher,

Appellant

-v-

Robert C. Anderson,

Respondent-Appellee

On appeal from the
Michigan Supreme Court

BRIEF OPPOSING RESPONDENT ANDERSON'S MOTION TO DISMISS

WILLIAM L. FISHER, Esq.
Attorney at Law
Relator, in pro per
1051 Naughton St. #202
Troy, Michigan 48084
(313)-689-8550

TABLE OF CONTENTS

Page

Argument Section I

The lower court orders appealed from rest on no adequate basis (federal or non-federal) 1

Argument Section II

Co-relator Beer has never had his "day in court" though he has been before five courts (including this Court) and is now (presently) before the sixth --this Court, but in a quo warranto action this time; the prior mandamous action of Beer et al v Austin et al was dispositive of nothing 3

Argument Section III

Murgia and Vance, relied upon respondent Anderson, to show want of a federal question show just the opposite; if they presented substantial federal questions for this Court to speak on age discrimination, then, a fortiorari, does the case at hand 7

Argument Section IV

Respondent Anderson's said Motion to Dismiss contains many errors and misstatements which appear to be made to mislead and deceive 10

Page

Argument Section V-

Respondent Anderson's said Motion to Dismiss should be stricken for being out of season and in violation of Michigan law 13

TABLE OF AUTHORITIES

Constitutional Provisions

MICH. CONST., art. XI, Sec 17. 2

MICH. CONST., art. II, Sec 12. 2

MICH. CONST., art. VI, Sec 19. 3

MICH. CONST., art. VI, Sec 19. 11

MICH. CONST., art. IV, Sec 30. 14

FED. CONST., art. VI, Clause 3 . . 4,8,9

Statutes

28 USC 1257 6

Cases cited

Bosworth v Terminal Railway Association (C. A. 7) 80 Fed. 969 (1897) 14

Murgia and Vance 7
(See Jurisdictional Statement)

Page

Shoultz v McPheeters,
79 Indiana 373 (1881) 9

Streeter v Paton,
7 Michigan 341 8

Throop v Langdon,
40 Michigan 673 8

Underwood v McDuffee,
15 Michigan 361 8

BRIEF OPPOSING RESPONDENT ANDERSON'S MOTION TO DISMISS

Now come People and submit the following as and for their Brief Opposing said Motion to Dismiss.

Argument Section I

Much of respondent Anderson's said Motion is devoted to showing how, upon the merits of the case, he (respondent Anderson) is not the usurper, as charged in the instant quo warranto action, but, supposedly, rightfully holds the office in question. Nearly masked in all his words are fatal flaws in logic bringing to mind the adage:

> "Words are like leaves; and where they most abound,
> Much fruit of sense beneath is rarely found."
> Essay on Critiscism --Pope

Respondent Anderson says that in August 1980, co-relator Beer's office was "vacant" for he (respondent Anderson) "ran for the vacant judicial seat in the primary

election in August of 1980" (emphasis supplied; p. 5 lines 12 and 13). On the same page (page 5 lines 10 and 11) he says that co-relator Beer's "term of office expired on January 1, 1981."

How possibly could co-relator Beer's term of office expire on January 1, 1981 when his office was "vacant" in August 1980?

How possibly could respondent Anderson say that co-relator Beer's office was "vacant" when the Michigan Constitution (Art. XI -Sec. 17) requires impeachment proceedings to remove a judge from office and then only "for corrupt conduct or for crimes or misdemeanors"?

How possibly could respondent Anderson consider himself co-relator Beer's successor in office when he never defeated co-relator Beer in the 1980 elections or in any other election?

Yet the Michigan Constitution (Art. II -Sec. 12) says that co-relator Beer's

term of office does not expire until his successor is "elected and qualified".

How possibly could respondent Anderson say that said "age discrimination clause" (Michigan Constitution Art. VI Sec. 19) applies to co-relator Beer when it is merely a one-time (not a continuing) requirement which co-relator Beer met over twenty years ago when first he was appointed to the Oakland County Circuit Court bench in 1958?

Assuming, arguendo, that said "age discrimination clause" is a continuing requirement so as to apply to co-relator Beer in 1980, it is invidiously discriminatory against him and deprives him of his property right to the office in question without due process in violation of the Federal constitution including the 14th Amendment thereof; more than this, it illegally interferes with co-relator Beer's performance of the solemn federal duty expressly en-

joined upon him by Clause 3 Art. VI thereof.

On the merits of the case, it can be shown conclusively that

(a) co-relator Beer's "judicial seat" was never vacant, that

(b) respondent Anderson is not co-relator Beer's successor in office, that

(c) co-relator Beer's term of office has yet to expire (since he holds over until his successor is "elected and qualified"), and

(d) respondent Anderson usurps the office in question without warrant in law and interferes with co-relator Beer's performance of his duties including the federal duty enjoined upon him by Clause 3 Art. VI of the Federal constitution.

Argument Section II

Though co-relator Beer has never had his "day in court" upon the merits of the case, respondent Anderson, via said Motion to dismiss, unjustly, seeks to perpetuate

this injustice. He has the unmitigated gall to say that the "decisions in Beer et al v Austin et al are dispositive as to the case at bar", whereas Beer et al v Austin et al was dispositive of nothing; moreover, he (respondent Anderson) was not even a party to Beer et al v Austin et al.

This Court exercised its discretion and denied certiorari in Beer et al v Austin et al which was too bad because, if it hadn't, there would be no respondent Anderson usurping co-relator Beer's office! The two Michigan state courts (Supreme Court and the Court of Appeals) exercised their discretion and refused to decide Beer et al v Austin et al on the merits. Beer et al v Austin et al was for mandamus in the nature of a declaratory judgment action against the Michigan Secretary of State Austin seeking to correct his conduct in wrongfully preventing co-relator Beer from running to succeed himself in

the 1980 elections.

This Court (the sixth before whom co-relator Beer has appeared before) now has a quo warranto action before it upon appeal as of right (28 USC 1257) and, as a party for the very first time, respondent Anderson who usurps the office in question. In the case sub judice, the two Michigan courts (Supreme Court and the Court of Appeals) exercised their discretion and refused to decide same on the merits.

Thus, co-relator Beer has been before five courts (including this Court) who have all exercised their discretion to deny deciding the controversy on its merits! Respondent Anderson is guilty of playing a cruel joke upon co-relator Beer by asking this Court to deny the People of the State of Michigan their statutory right of appeal under said Sec. 1257!

In the case at hand, the People only

want what, in justice, they deserve, to wit: a decision on the merits of the controversy presented; if not from this Court, then from the Michigan state courts where the case originated. This Court has it within its power to remand the case to the Michigan state courts for a decision on the merits.

Argument Section III

Respondent Anderson says that this Court "has recently (sic: 3 yrs. ago?) spoken" (first p. 2, lines 15 and 16) on the issue of age discrimination in Murgia and Vance as though this Court speaks once forever and for all!

If Murgia and Vance presented substantial federal questions for this Court "to speak" on age discrimination, then, a fortiorari, does the case at hand!

Murgia and Vance involved mere employments, whereas the case sub judice involves a "fundamental right", to wit: the most important and sacred property known to

the law of the land, to wit: title to a public office. More than that, the public office in question is a judicial office where, for the time being, a portion of the sovereignity attaches to be exercised for the public good. Underwood v McDuffee 15 Mich 361; Throop v Langdon 40 Mich 673; Streeter v Paton 7 Mich 341. The portion of the sovereignity attaching to said judicial office includes, without question, to a certain extent[1], at least, the federal government. After all, the originating source of co-relator Beer's power to uphold the federal constitution in the discharge of his duties is none other than the federal government! This duty is expressly enjoined upon him by the federal constitution itself (Clause 3 Art. VI) and

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1. though, concededly, not to a dominant extent, as in the case of a federal judicial office; but, nevertheless, to such a significant and vital extent as to involve a substantial federal question, indubitably.

consequently is first, foremost and exclusively a federal duty; co-relator Beer's ability to carry out said duty to uphold the federal constitution is made possible in the first instance by the federal government.

Of all of the state officers enumerated in said Clause 3 Art. VI, the "Judicial Officers" alone are themselves an emanation of the perogative of the federal government.

The following quotations paraphrased to fit the case at bar which were cited with approval by Chief Justice Elliott in Schoultz v McPheeters 79 Indiana 373 (1881) illustrate this principle:

> "The one common and essential feature in all courts is a judge, or judges, so essential, indeed, that they are even called the court."

> "In these courts the sovereign (in this case the federal government to the certain and vital extent shown) is supposed in contemplation of law to be always present

(where co-relator Beer holds court); or at least is there (where co-relator Beer holds court) represented by the judges (co-relator Beer's in this case), whose power (co-lator Beer in this case) is but an emanation of the per-ogative (of the federal gov-ernment insofar as concerns co-relator Honorable William J. Beer's federal duty of upholding the federal con-stitution)".

Argument Section IV

Respondent Anderson's said Motion contains many errors and misstatements which appear to be made to mislead and deceive.

(a) Respondent Anderson repeated-ly refers to himself as "Judge Anderson" and to co-relator Beer as "former Judge", whereas, rightfully, this is the ultimate issue in the case sub judice. Respondent Anderson's self-styled references are in-excusable in view of his wrongfully holding the office in question, defacto, without warrant in law against co-relator Beer's

valid claim, de jure, to the title to said office and there being no adjudication on the merits whatsoever as to the issue at hand.

(b) Respondent Anderson refers to co-relator Fisher as Appellant. Co-relator Fisher first had to receive from the Michigan Attorney General his declination to bring the instant quo warranto action before he (co-relator Fisher) could bring same in the name of the People of the State of Michigan. The people are vitally interested in testing, by what warrant in law, respondent Anderson holds the office in question and are the Appellant[2] in this case.

(c) Appellant is said to challenge the "age discrimination" clause of Sec. 19 Art. VI of the Michigan Constitution on the basis of unlawful age discrimina-

2. In this connection, this court's clerk Stevas improperly entitled (over Appellant's objection) the case sub judice, to wit: making Appellant other than People of the State of Michigan.

tion which is true but not the whole truth; the "age discrimination" clause of Sec. 19 is also challenged on the basis that it has no application whatsoever to co-relator Beer since it is a one time requirement which co-relator Beer met in 1958 when he was first appointed to the Oakland County Circuit Court bench.

(d) The Michigan Court of Appeals and the Michigan Supreme Court are said to have "denied Appellant's challenge" but this is false; both courts denied leave to have the merits of "Appellant's challenge" heard which is a far cry from denying Appellant's challenge! Co-relator Beer has been denied his "day in court" by the Michigan State courts on his claim that he has been deprived of his property right in his public office without due process of law in violation of both the state and federal constitutions.

Argument Section V

Respondent Anderson's said Motion should be stricken for being filed out of season and in violation of fundamental justice including Michigan law.

(a) The Court's Clerk Stevas wrongfully granted Respondent Anderson's untimely request for extension of time, whereupon Appellant asked him to submit his action to a Justice or the Court for review and rectification (Rule 29.4). As of this writing Appellant has received no word from the Clerk; in any event, Appellant has preserved the issue for the full Court when it hears the instant ap-appeal.

(b) Oakland County Civil Counsel has taken it upon itself the role of interloper in the case sub judice, to wit; to represent respondent Anderson in his private matter of defending against a charge of usurping a public office without warrant in law. In the process, Oakland County

Civil Counsel has appropriated public money (so scarce and hard-earned these days) for this private purpose in manifest violation of fundamental justice including the Michigan Constitution (Art. IV -Sec. 30).

Oakland County Civil Counsel's duty in the instant quo warranto action requiring resolution of the conflicting claims of co-relator Beer and respondent Anderson to title to a public office is clear and cogent, to wit: to remain strictly neutral. This is only fair and expected and demanded upon both sound principle and solid reason. Circuit Judge Jenkins in Bosworth v Terminal Railway Association (C.A. 7) 80 Fed 969 (1897) cited authority and stated ample reason for this conclusion when speaking of similar duties of a receiver appointed in a mortgage foreclosure case:

> "But he has not the right of appeal from a decree declaring the respective equities

> of parties to the suit. He should therein be indifferent, and not a partisan. His duty is to all parties in common. He should not become the advocate of one against another." Bosworth v Terminal Railway Association, supra.

How can this Court countenance such conduct by giving ear to said Motion to Dismiss?

WHEREFORE, said Motion to Dismiss should be stricken or denied and the case set down for hearing on the merits with jurisdiction noted as certain or, alternatively, the case should be summarily disposed of on the merits by this Court or by remand to the state courts in view of respondent Anderson's holding of said office to be totally defenseless in law.

Respectfully submitted,

William L. Fisher, Esq.
Attorney at Law
Relator in pro per
1051 Naughton St. #202
Troy, Michigan 48084